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U.S. DISTRICT &
BANKRUPTCY COURTS
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FILED DEPOSITORY IDAHO
Cameron S. Burke, Clerk

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF IDAHO

In re:)	
)	
)	Case No. 93-02385
)	
DAVID SILVA and)	OBJECTION TO MOTION FOR APPROVAL
SHARON SELMASSKA,)	OF COMPROMISE AND SALE OF
)	ESTATE ASSETS
Debtors.)	
)	

COME NOW the debtors, by and through their attorney of record, and hereby objects to the Motion for Approval of Compromise and Sale of Estate Assets filed by the trustee, John Krommenhoek. This objection is based on the following grounds:

1. The trustee proposes to sell the cause of action of the estate in the case of *Zimmerman v. Wussler* but allow the debtor to retain his right to prosecute his interest "to the extent that such interests are not the property of this bankruptcy estate." 11 USC 541(a)(1) defines the property of the estate to include all legal and equitable interest of the debtor in property as of the commencement of the case. The trustee in a chapter 7 bankruptcy "succeeds to all causes of action held by debtor at time the bankruptcy petition is filed." *Jones v. Harrell*, 858 F.2d 667 (11th Cir. 1988). Therefore, the trustee appears to be, in fact, selling the interests of the estate and debtor in the cause of action.

2. The cause of action of the estate in the case of *Zimmerman v. Wussler* should not be sold at public auction. The likely only bidder will be the defendant, Barbara Wussler. The

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purchase of the cause of action will affect the results of the adversary action of *Wussler v. Silva* pending before this court. In the adversary action, Mrs. Wussler is requesting that the discharge of Mr. Silva be denied on the basis of a California judgement. If the estate's cause of action in the case of *Zimmerman v. Wussler* is sold, the validity of the California judgment may not be pursued, and Mr. Silva could lose his discharge without a final determination as to the validity of the California judgement. The end result is that the debtor may be denied his discharge simply because he does not have the funds to purchase the cause of action. This result is contrary to the policy of the bankruptcy code to allow a debtor a fresh start.

3. The trustee's motion incorrectly assumes that Mrs. Wussler has a valid claim in this bankruptcy proceeding. The debtor reserves the right to object to the claim of Mrs. Wussler in this proceeding.

4. The trustee's motion also incorrectly assumes that all creditors of the estate will be paid in full from the compromise and sale. Under the trustee's proposal, the debtor might have a continuing interest in the California cause of action only all creditors are paid in full. There is no minimum bid requested at the sale. The judgement against First Fidelity Bank N.A., is currently on appeal. Therefore, it is not certain that all creditors will be paid in full.

WHEREFORE, the debtors request that the Motion for Approval of Compromise and Sale of Estate Assets be denied.

DATED this 22nd day of April, 1998.



Laura E. Burri
Attorney for Debtors

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing document was mailed, postage prepaid, to the following on this 22nd day of April, 1997.

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